

## Part 115 – Revised Medical Home Cultivation Assessment of Public Comment

**COMMENT:** Several commenters question the terms “immature cannabis plant” and “mature cannabis plant.” A few commenters believe that the definitions provided are not clear and do not consider phases of plant growth; the transition from an “immature” plant into a “mature” plant happens slowly and the definitions as provided are open to interpretation. Many other commenters suggest only plants that can be observed by visual examination as female should be considered “immature” and only plants that can be observed by visual examination as being ready for harvest should be considered “mature.”

**RESPONSE:** The regulations follow the terminology used by the Marihuana Regulation and Taxation Act (MRTA). No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** One commenter states that the term “strain” in section 115.3(c), is botanically inaccurate and suggests the more accurate verbiage would be to use the term “variety” in reference to seeds or plants grown from seeds and the term “cultivar” for the plants created through vegetative propagation.

**RESPONSE:** The Office acknowledges this comment and acknowledges that the MRTA uses the term “variety” as well as “strain” in the definition of “Form of medical cannabis.” No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** Two commenters suggested amending the definition for “private residence” in section 115.1. One commenter requested to include retirement home units, either rented or owned, even if the facility provides some form of health or hospital care. Another commenter asked the Office to reconsider the exclusion of hotels, motels, and other areas of unconventional areas of permanent residence from the definition of private residence. The commenter stated that more and more people are moving into different means of housing and that these medical patients should be allowed the ability to cultivate their own medicine.

**RESPONSE:** The Office acknowledges these comments and may consider them in future guidance and rulemaking. Section 115.1 provides the Board discretion to allow certain public accommodations to be considered a private residence. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** Two commenters suggested amending the definition for “on the grounds” in section 115.1 to allow medical patients to use any external areas that they have legal rights to for their own purposes. The commenters also stated that this amendment will provide more safety in keeping cannabis secure so that no unauthorized person can access the site. One commenter also stated that the current definition has a biased tone and will produce inequitable outcomes for medical patients by limiting the ability to grow outdoors to only those with access to a yard, patio, rooftop, balcony, or terrace.

**RESPONSE:** The authority for home cultivation of medical cannabis lies within a patient’s private residence or on the grounds of such person’s private residence, which would include external areas that the individual has legal rights to provided that it is adjacent to their private residence. The Office acknowledges these comments, however no changes were made to the proposed regulations as a result of these comments.

**COMMENT:** One commenter suggested amending the definition for “Personal Home Cultivation” to include the act of “storing” as a step in the process of cultivating cannabis plants under all references to the home growing process. The commenter suggested the following language, ““Personal Home

cultivation” means growing, cloning, harvesting, drying, curing, grading, trimming, and storing cannabis plants for medical use that is subject to Cannabis Law Article 3 and Penal Law Article 222.”

**RESPONSE:** The Office acknowledges this comment, however no changes were made to the proposed regulations as a result of this comment.

**COMMENT:** One commenter suggested changing the language for the definition of “Designated caregiver” to ““Designated caregiver” means an individual designated by the certified patient. A designated caregiver should be registered with the Board and oblige by the rules set forth by the Board.” The commenter stated that the definition as written provides no clarity on the term limit for a designated caregiver and the process to change the designated (vs. secondary) caregiver.

**RESPONSE:** A designated caregiver is an individual designated by a certified patient in a registry application. A certified patient may designate up to five caregivers and may add or remove a caregiver at any time during the duration of the active certification. A caregiver’s registration expires when the patient’s certification expires. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** Many comments were received regarding testing of home cultivated cannabis. A few commenters expressed interest in having access to testing for home cultivated cannabis to ensure that they are properly and efficiently dosing. Other commenters stated there should be designated places to get home cultivated cannabis tested. One commenter also stated that the state can designate a few companies from the first round of adult-use to test home cultivator yields.

**RESPONSE:** The Office acknowledges these comments; however, it is beyond the scope of the proposed regulations.

**COMMENT:** A few commenters would like clarification on how many plants they can grow if they have a medical card and how many plants they can grow per household.

**RESPONSE:** A certified patient that is registered with the Office may plant, cultivate, harvest, dry, process or possess three mature and three immature cannabis plants at any one time. No more than six mature and six immature cannabis plants may be cultivated, harvested, dried, or possessed within any private residence, or on the grounds of a person's private residence. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** Numerous commenters suggested that plant limits in section 115.2 were far too restrictive for the needs of medical patients and should be increased.

**RESPONSE:** The Office acknowledges these comments; however, no changes were made to the proposed regulations as a result of these comments.

**COMMENT:** One commenter suggested that “clones” or “cuttings” should not be counted towards plant count.

**RESPONSE:** The Office acknowledges this comment, however no changes were made to the proposed regulations as a result of this comment.

**COMMENT:** Many comments were received regarding caregiver plant limits. Some commenters sought clarification on the limits for caregivers growing on behalf of patients, while other commenters sought changes to the proposed regulation to increase the number of plants caregivers can grow for multiple patients and themselves.

**RESPONSE:** Section 222.15 of the Penal Law provides that no more than six mature and six immature cannabis plants may be cultivated, harvested, dried, or possessed within any private residence or on the

grounds of a person's private residence. Section 115.2(j) of this Part provides that certified patients utilizing a designated caregiver shall identify a single site for cultivation of their medical cannabis. The Office acknowledges these comments; however, no changes were made to the proposed regulations as a result of these comments.

**COMMENT:** Several commenters requested clarification on section 115.2(i). One commenter believes that patients should be able to grow in their yards with a fence and security camera, with at most, a greenhouse to block crops from public view and an air filter to control odor. One commenter recommended removing the section stating what may be a reasonable measure for storing cannabis because it is too onerous for home cultivation. Another commenter indicated that for many the only area suitable area for cultivation may be visible from the road even with a fence and/or barrier. They stated that waivers should be put into place for patients that are unable to shield their crop in addition to consideration for patients affected by city settings when a balcony would have to be used. Commenters also requested clarity on what “plainly visible” means and ask if there’s an amount of feet away from the road that is appropriate to be considered unseen.

**RESPONSE:** Part 115.2(i) includes measures to comply with section 222.15 of the Penal Law which provides that any cannabis plants, and any cannabis produced by any such cannabis plants cultivated, harvested, dried, processed or possessed shall be stored within such person's private residence or on the grounds of such person's private residence. Plainly visible from public view may be interpreted to include, but not be limited to cultivation behind, gates, doors, fences, and other barriers. The Office acknowledges these comments; however, no changes were made to the proposed regulations as a result of these comments.

**COMMENT:** Many commenters recommended removing the requirement for designated caregivers to keep plants separate for different patients. The commenters believe requiring caregivers to keep plants in a manner that can readily determine to whom such cannabis plants belong to is sufficient. One commenter also requested clarification on what the term “separate” describes.

**RESPONSE:** The proposed regulations do not limit the approach designated caregivers may use to maintain a separation of any cannabis being cultivated. The only requirement is that the approach used for separation must be in a manner that can readily identify each cannabis plants and its corresponding patient. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** Many commenters suggested that caregivers should be allowed to recover the costs of resources used while cultivating medical cannabis.

**RESPONSE:** The current regulations permit designated caregivers to be reimbursed for the costs of goods, materials, or utilities for which they have incurred expenses. Caregivers cannot be reimbursed for their time, knowledge, or expertise. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** One commenter suggested changing the language for section 115.2(m)(2) to “suppose a property has in place a smoke-free policy. In that case, it is not required to permit the smoking of cannabis products on its premises, except where the policy places limitations on the certified medical use of cannabis.” The commenter stated the Board should consider individuals growing in a private residence where smoking is prohibited because not everyone has the means or access to secure spots in designated residences or community gardens.

**RESPONSE:** Home cultivation of medical cannabis does not necessarily mean that the cannabis, once harvested, will or must be smoked. A landlord may maintain a smoke-free policy yet allow home cultivation of cannabis. A landlord may refuse to lease, or otherwise penalize a certified patient or

designated caregiver for engaging in any medical cannabis activity if the activity would cause the landlord to lose a monetary or licensing related benefit under federal law or regulations. The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment.

**COMMENT:** Many commenters suggested amending 115.2(c) stating that medical patients should be allowed to cultivate in all areas where the patient has legal rights to use that area for their own purposes. Two commenters suggested allowing community gardens and designated residences in addition to private residences provided that the patient has entered a mutual agreement with all parties to cultivate cannabis. One commenter stated that limiting where the patients can cultivate is to perpetuate the unbalanced policies and laws of prohibition that solely has targeted the poorest communities. Two commenters also suggested changing the language in section 115.2(l)(4) to include designated residences and community gardens as well. The commenters stated that if the cultivator has a legal right to cultivate at a site and that site can be secured per the regulations, then patients and caregivers should not be prohibited from growing their medicine.

**RESPONSE:** Section 222.15(3) of the Penal Law provides that home cultivation shall only be permitted within, or on the grounds of, a person's private residence. The Office acknowledges these comments; however, no changes were made to the proposed regulations as a result of these comments.

**COMMENT:** Many commenters state that package labels should be allowed to utilize QR codes and other technologies to limit the amount of packaging, plastic, and paper used in the cannabis industry.

**RESPONSE:** Product labeling must comply with the requirements set forth in this Part, including each cannabis plant or package of seeds for sale shall be labeled with an unobstructed and conspicuous label. Nothing prevents a registered organization from utilizing a scannable bar code or QR code linked to a downloadable document providing additional information about medical cannabis or linked to a website where the document can be downloaded. If a scannable bar code or QR code is used, a registered organization shall provide a comparable physical or paper document directly to certified patients or their designated caregivers upon their request. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** One commenter suggested amending the language in section 115.3(c) to be more specific to create stronger guidance regarding which requirements cultivators, distributors and sellers must follow. The commenter stated that the need to reserve authority should be done more narrowly throughout the regulations. They also requested that the Office be more specific on the meaning of "preserves the integrity of the cannabis." Lastly, the commenter suggested the Office provide more examples on the types of packaging that will be prohibited.

**RESPONSE:** The Office acknowledges these comments and may consider them in future guidance and rulemaking. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** Many commenters asked for guidance on how they should obtain legal seeds once the regulations are approved. Several commenters advocate for consumers to be allowed to purchase directly from micro-licensed farms. One commenter stated that there should be no restrictions on where seeds and clones are obtained from.

**RESPONSE:** Registered organizations, registered in accordance with Article 3 of the Cannabis Law and other licensees authorized by the Office are permitted to sell immature cannabis plants and seeds for home cultivation. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** One commenter suggested amending the language in section 115.3(d) to allow for registered organizations or licensees authorized by the Office, transporting medical cannabis for home cultivation to

secure the product from theft, protect it from deterioration, or factors that would make the product unsafe to sell. The commenter suggested the following language: “Notwithstanding any other law or regulation, a registered organization or licensee shall transport medical cannabis for home cultivation in such a manner as to reasonably ensure the protection of said medical cannabis from theft and environmental factors that would make the product inviable or unsafe for sale.” Another commenter suggested specifying the way a registered organization is required to transport medical cannabis for home cultivation rather than referring to “in a manner determined by the Office.” They also recommended moving section 115.3(d) to 115.3 (b) as it pertains to cultivation, transport and storage.

**RESPONSE:** The Office acknowledges these comments and may consider them in future guidance and rulemaking. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** One commenter suggested the Office require more information than what is provided in section 115.3 in order to safeguard against unauthorized pesticide use on cannabis. They suggested amending the section to direct businesses to also disclose any pesticides used in transport and storage in addition to cultivation. The commenter also suggested that New York State enhance its pesticide safety practices and create a list of approved pesticides for cannabis cultivation, transportation, and storage with input from the toxicologists at the New York State Department of Health.

**RESPONSE:** Information on the use of pesticides on cannabis in New York is available on the New York State Department of Environmental Conservation website at <https://www.dec.ny.gov>. The Office acknowledges these comments and may consider them in future guidance and rulemaking. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** One commenter suggested changing the amount of time to notify the Office of adverse events from 24 hours to 72 hours. They believe that 24 hours is an unreasonable time frame for making these notifications.

**RESPONSE:** The Office acknowledges this comment, however the 24-hour window for registered organizations to report adverse events to the Office is in line with the current and proposed medical cannabis regulations. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** One commenter requested clarification of section 115.2(a) and 115.3(f)(1) on the reasoning why the regulations restrict home cultivation and sales of plants/seeds to certified patients under 21 years old when certified patients under 21 can purchase medical cannabis from dispensaries.

**RESPONSE:** Section 222.15(1)(c) of Article 222 of the MRTA prohibits anyone under the age of twenty-one from planting, cultivating, harvesting, drying, processing, or possessing cannabis plants. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** One commenter made suggestions to include the Poison Control Center number throughout the proposed home cultivation regulations.

**RESPONSE:** The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment.

**COMMENT:** Many commenters had questions about when the regulations will be approved and implemented. Several commenters pleaded to get the regulations approved as soon as possible so those that need it, can begin growing. Several commenters asked what the next steps are after the public comment period for implementing the regulations.

**RESPONSE:** No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** Two commenters questioned where they could find the public comments from the original proposed medical home cultivation regulations.

**RESPONSE:** The assessment of public comment is published in the State Register. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** One commenter expressed concern for veterans and their access to dispensary cannabis. The commenter believes that it would be rewarding for veterans suffering from PTSD, pain, anxiety, and suicidal ideation to grow medical cannabis successfully. The commenter recommends there be programs in place providing growing equipment to low-income patients and veterans.

**RESPONSE:** Nothing prohibits a registered organization from offering discounts or a discount program to certified patients and designated caregivers for the purchase of medical cannabis product. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** Two commenters suggested adding a provision to allow for home cultivation and use for religious purposes. One commenter stated that the current provisions fail to provide individuals necessary protections for cultivation and use for religious purposes. Another commenter stated that allowing religious communities to cultivate allows them to share cannabis as a sacrament at levels deemed necessary by those communities.

**RESPONSE:** The Office acknowledges these comments; however, they are beyond the scope of the proposed regulations.

**COMMENT:** One commenter believes that the regulations regarding prohibiting access to home grown cannabis to adults and children under the age of 21 is impractical and perpetuating a stigma. The commenter believes that plant education of children is important considering the history of the war on drugs and how it has shaped the way people have stigmatized cannabis. The commenter asks OCM to consider the benefits of the plant and how cannabis has impacted many lives in a positive way, including children who have used it for medicinal use to better their lives. They ask that the regulations not make it impossible to educate children about how cannabis grows and how to cultivate plants in order to make medicine or learn how hemp can be used in various ways.

**RESPONSE:** The Office acknowledges this comment; however, it is beyond the scope of the proposed regulations.

**COMMENT:** One commenter questioned if they need a license or have to be certified to grow cannabis.

**RESPONSE:** In order to grow cannabis for medical use, a person must be certified and registered with the Office. Growing cannabis for adult use (non-medical) is beyond the scope of the proposed regulations. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** One commenter questioned if there will be a place to get something in writing, validating their ability to legally cultivate cannabis and avoid any trouble with law enforcement.

**RESPONSE:** Article 3 of the Cannabis Law provides protections for the medical use of cannabis. Certified patients and designated caregivers shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for the certified medical use of cannabis, or for any other action or conduct in accordance with this article. In addition, a certification issued to the patient, and any identifying information in accordance with Cannabis Law and its accompanying regulations, would serve to demonstrate that such patient is authorized to grow medical cannabis as a participant in the medical program. Designated caregivers who are authorized to grow for patients in accordance with this part, would provide their registration documentation and any identifying

information in accordance with Cannabis Law and its accompanying regulations. The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment.

**COMMENT:** One commenter expressed concern about the proposed regulations forcing people to cultivate indoors. The commenter stated that indoor cultivation is bad for the environment and does not look good for sustainable agriculture in New York.

**RESPONSE:** Section 115.2(c) states that “The personal home cultivation of medical cannabis may occur in, or on the grounds of, a person’s private residence.” The regulations do not require or force the indoor cultivation of cannabis and includes provisions for outdoor cultivation. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** A few commenters expressed their general support for medical home cultivation. One commenter stated being able to cultivate at home would help mitigate costs compared to visiting a dispensary. Another commenter stated that the rules surrounding cultivation are adequate and the number of plants allowed is sufficient.

**RESPONSE:** The Office acknowledges these comments. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** Two commenters suggested amending section 115.2(h) to include CO<sub>2</sub>, in the form of dry ice, as a method of processing. Another commenter suggested allowing BHO processing in addition to CO<sub>2</sub>.

**RESPONSE:** The Office acknowledges these comments, however no changes were made to the proposed regulations as a result of these comments.

**COMMENT:** Several commenters requested clarification on the five-pound limit in section 115.2(g). One commenter questioned if the five-pound limit was for flower only or if it includes stems, roots, leaves, etc. One commenter suggested doubling the weight limit in line with increasing the number of plants. Another commenter questioned the reasoning behind the weight limit and indicated that there should be no limitation on the amount of cannabis that is allowed in the household. They also stated that there are no limitations on other recreational substances such as alcohol, therefore it should be the same for cannabis.

**RESPONSE:** The regulation aligns with MRTA. The Office acknowledges these comments and may consider them in future guidance and rulemaking. No changes were made to the proposed regulations as a result of these comments.

**COMMENT:** One commenter stated that when read together, section 115.2(d) and 115.2(e) greatly inhibit the process known in agricultural and horticultural communities as “succession planting.” They also stated that by including terms dry, dried, harvest, and harvested, it indicates that the patient/caregiver must complete the drying process from a harvest before it would be permissible to transition vegetative plants to flowering plants from which to produce the required medical cannabis.

**RESPONSE:** The Office acknowledges this comment and may consider it in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** One commenter suggested omitting the phrase “or possessed” in section 115.2(e) for clarity and accuracy. The commenter stated that it conflicts with section 115.2(g) and with subdivision five of Penal Law section 222.15 allowing possession of up to five pounds of cannabis in a private residence. The commenter also recommended adding the phrase “at any one time” to the end of the last sentence of section 115.2(e).

**RESPONSE:** The Office acknowledges this comment and may consider it in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** One commenter recommended removing the word “federal” from section 115.3(a). The commenter stated that under federal law, cannabis is classified as a schedule 1 drug. The commenter also stated because federal law does not recognize the medical value of cannabis, requiring compliance with federal rules, regulations, and laws is both impossible and confusing for registered organizations and licensees and could potentially deter potential applicants from seeking licensure.

**RESPONSE:** Certified patients and designated caregivers home cultivating medical cannabis must adhere to all applicable federal rules and regulations, not including those that are contrary to or otherwise conflicts with the Cannabis Law or this Part. Clarifying changes were made to the proposed regulations as a result of this comment.

**COMMENT:** One commenter suggested striking the language in section 115.3(f)(3) and provide certified patients and designated caregivers with general safety instructions relating to medical cannabis through the registration process. The commenter stated that the inclusion of this language in a safety insert will produce excess waste in packaging and leaving the language up to the seller will produce different instructions across RO’s, leaving information up to interpretation by certified patients and their caregivers.

**RESPONSE:** The Office acknowledges this comment and may consider it in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** One commenter requested the Office explain its rationale in section 115.3(f)(3)(x) for not requiring safety compliance testing of cannabis seeds and plants sold for home cultivation.

**RESPONSE:** The regulations require disclosure of any pesticides used in the cultivation, as well as any other information determined by the Office to be included on labeling. The certified patient or designated caregiver may use this information when considering which plants to purchase for home cultivation, or which registered organizations or licensees authorized by the Office to purchase from. The regulation aligns with Cannabis Law. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** One commenter suggested the language in 115.3(f) stating that medical cannabis product cannot be distributed to anyone else is inconsistent with the concept of transferring without compensation in section 115.2(f).

**RESPONSE:** Section 115.2(f) allows the transfer without compensation to a certified patient or designated caregiver. Transferring medical cannabis without compensation between patients or caregivers is consistent with the Cannabis Law. Distributing medical cannabis refers to commercial activities between two cannabis licensees, which are distinctly different activities and, therefore, should not be treated similarly. No changes were made to the proposed regulations as a result of this comment.

**COMMENT:** Many commenters suggest that designated caregivers should not have to count their legally personally allowable cannabis towards the total allowable number of plants they can grow for Certified Patients.

**RESPONSE:** Whether or not a designated caregiver is growing medical cannabis for themselves and a certified patient or patients, the regulations still require that there be no more than twelve, six mature and six immature, cannabis plants growing at any one time at a household or private residence. The regulations as written are in line with the maximum allowable number. Clarifying changes were made to the proposed regulations as a result of these comments.